

REMARKS

Claims 1-46 are under examination in this case. Favorable reconsideration is respectfully requested in view of the following remarks.

It should be noted that the Official Action only provides arguments directed to Claims 1-43. The Official Action does not address Claims 44-46.

Claim Rejections - 35 U.S.C. §103(a)

Initially, the Official Action rejected Claims 1-10, 15, 16, 31-33 as allegedly unpatentable over U.S. Patent Application Publication No. 2003/0130883 to Schroeder in view of U.S. Patent No. 5,448,226 to Failing.

Specifically, the Official Action admits that Schroeder does not specifically disclose auditing of improperly implemented promotions, and relies on Failing for disclosure of auditing of proper promotional shelf talkers. (Page 3 of the Official Action).

Under 35 U.S.C. §103(a), the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. As set forth in M.P.E.P. § 2143, one requirement for establishing a *prima facie* case of obviousness is that the combination of references must teach or suggest all the claim features. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Independent Claim 1 recites a method of providing model-based promotion and price computation, comprising the steps of: a manufacturer providing promotion information to be considered in developing the promotion and price computation model; a retailer providing price determination parameters to develop the promotion and price computation model; developing the promotion and price computation model from the promotion information provided by the manufacturer and the price determination parameters provided by the retailer to implement a promotion; and auditing of improperly implemented promotions.

Independent Claim 31 recites a method comprising series of steps to be performed by a computing device stored on a computer readable medium, comprising the steps of: receiving promotion information to be considered in developing a promotion and price computation model; receiving price determination parameters to develop the promotion and price computation model; developing the promotion and price computation model from the received promotion information and the price determination parameters to implement a promotion; and auditing of improperly implemented promotions.

In this case, Claims 1 and 31 are patentable over Schroeder in view of Failing because the applied references do not disclose all features as recited. Specifically, neither Schroeder nor Failing discloses auditing of improperly implemented promotions.

Schroeder discloses a method and business planner system that predicts the outcomes of various proposed promotions of a product (paragraph [0077]). The business planner system permits a retailer or remote sales staff member to experiment with a variety of scenarios to predict the benefit of alternate promotions (paragraph [0056]). The sales staff representing a manufacturer develops a promotion plan for a given time period. The proposed promotions are entered in a computer program that runs a model based on a prediction of increased sales to determine a set of promotion conditions. The tool uses historical databases of sales for a variety of promotion conditions at specific retailers and predicts how plan promotions will affect sales in a particular store (paragraphs [0057]-[0058]). There is no discussion in Schroeder of how to implement the promotion must less monitor when a promotion is improperly implemented. Schroeder does not disclose or suggest auditing improperly implemented promotions. While an administrator may enter administrative information for the purpose of future auditing there is no discussion in Schroeder of what such auditing would encompass. There is no discussion in Schroeder of ways to improperly implement any promotions and clearly no discussion of ways to audit improperly implemented promotions.

Failing discloses a system having a central store computer and multiple ESL-mounted shelf talkers, which are signs, cards or other printed material placed at the shelf location (Col. 1, lines 15-20 and Col. 2, lines 58-65). The system includes sensors to detect the presence of shelf talkers. (Col. 2, lines 65-67). Failing also discloses performing an audit to determine which products are on promotion, the start and end dates of the promotion, and the current status of whether or not shelf talkers are installed. (Col. 3, lines 14-20). There is no discussion in Failing of how improper promotions can be implemented much less audited, and instead focuses on making sure shelf talkers are properly installed. Thus, like Schroeder, Failing does not disclose or suggest auditing of improperly implemented promotions as recited in Claims 1 and 31.

In view of the forgoing it should be evident that Schroeder and Failing do not disclose all features of Claims 1 and 31, particularly the auditing of improperly implemented promotions.

In addition, Claims 2-10, 15, 16, and 32-33 which depend from Claims 1 and 31 are patentable for at least the reasons Claims 1 and 31 are patentable.

In addition, the Official Action rejected Claims 21-25 as allegedly unpatentable over U.S. Patent No. 5,933,813 to Teicher in view of Failing. Specifically, the Official Action admits that Teicher does not disclose implementing a promotion or a sales controller configured to audit improperly implemented promotions. (Page 5 of the Official Action). The Official Action relies on Failing for the disclosure of auditing of proper promotional shelf talkers. (Page 6 of the Official Action).

Independent Claim 21 recites a system comprising (1) a sales controller in communication with a retailer and a manufacturer, (2) a sales device in communication with the retailer and the sales controller, (3) the sales controller configured to receive promotion information from the manufacturer and the price determination parameters from the retailer to calculate a retail price and implement a promotion, (4) the sales device configured to receive the retail price from the sales controller and (5) the sales controller configured to audit improperly implemented promotions and send audit reports to the manufacturer.

In this case, Teicher and Failing do not disclose all features recited in independent Claim 21.

Teicher discloses a data processing system for promoting sale of products. The merchant communicates with a store computer system through a merchant interface and provides the store computer system with cost information. (Col. 3, lines 50-60). Teicher does not disclose a sales controller in communication with a retailer and a manufacturer. Only the merchant in Teicher provides the store computer system with information. In addition, as admitted in the Official Action, Teicher does not disclose a sales controller configured to audit improperly implemented promotions and send audit reports to the manufacturer.

As noted above, Failing also fails to disclose auditing improperly implemented promotions. Thus, even if combined with Teicher, the applied references do not disclose a sales controller in communication with a manufacturer or a sales controller configured to audit improperly implemented promotions and send audit reports to the manufacturer. Thus, Claim 21 is patentable over Teicher in view of Failing.

Claims 22-25 which depend from Claim 21 are also patentable for at least the reasons Claim 21 is patentable.

The Official Action rejected Claims 11-14 and 34-39 as allegedly unpatentable over Schroeder in view of Failing and Teicher.

As noted above, Teicher, Schroeder and Failing do not disclose a system that audits whether a promotion has been improperly implemented on the basis of a contract violation. As such, the combination of Teicher, Schroeder and Failing fails to disclose all of the features in Claims 1 and 31 from which Claims 11-14 and 34-39 depend.

The Official Action also rejected Claims 17-20 and 40-43 as allegedly unpatentable over Schroeder in view of Failing and U.S. Patent No. 6,845,396 to Kanojia. Specifically, the Official Action relies on Kanojia for disclosure of encryption. (Page 9 of the Official Action).

However, even if the applied references are combined, Claims 17-20, which depend from Claim 1, and Claims 40-43, which depend indirectly from Claim 31, are patentable for at least the reasons Claims 1 and 31 are patentable.

In addition, Kanojia discloses a method and system for targeting users of network devices for promotions. Kanojia does not have anything to do with retail stores or promotional labels on shelves as disclosed in Schroeder and Failing. Therefore, a person of ordinary skill in the art would not be motivated to combine the applied references as suggested by the Official Action.

Finally, the Official Action rejected Claims 26-30 as allegedly unpatentable over Teicher in view of Failing and Kanojia. Specifically, the Official Action relies on Kanojia for disclosure of a promotion schedule and encryption. (Page 10 of the Official Action).

However, even if the applied references are combined, Claims 26-30 which depend from Claim 21 are patentable for at least the reasons Claim 21 is patentable.

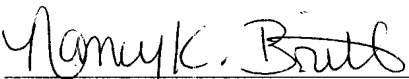
Conclusion

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that she be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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